

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Robert Zeidman,)
) File No. 23CV1433
) (JRT/DJF)
Plaintiff,)
)
vs.) Minneapolis, Minnesota
) January 3, 2024
Lindell Management LLC,) 10:22 A.M.
)
Defendant.)
)

BEFORE THE HONORABLE JUDGE JOHN R. TUNHEIM
UNITED STATES DISTRICT COURT
(MOTIONS HEARING)

APPEARANCES

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10:22 A.M.

(In open court)

THE COURT: You may be seated. Good morning, everyone.

This is Civil Case Number 23-1433, Robert Zeidman versus Lindell Management LLC. Counsel, would you note appearances, please.

MS. JOSHI: Cary Joshi.

THE COURT: Would you stand?

MS. JOSHI: Sorry. Yeah.

Cary Joshi and David Schlesinger for Robert Zeidman, and this is Mr. Zeidman.

THE COURT: Good morning to all three of you.

Thank you for coming, Mr. Zeidman.

MR. BECK: Good morning, Your Honor. Alec Beck for Lindell Management.

THE COURT: All right. Good morning to you, Mr. Beck.

All right. We have two motions, one to confirm and one to vacate the arbitration award in this case.

The Court has read the briefs. Ready to hear argument.

The motion to confirm was filed first, so I guess we will start that way.

1 MS. JOSHI: Thank you, Your Honor.

2 THE COURT: Ms. Joshi, am I pronouncing it
3 correctly, Joshi?

4 MS. JOSHI: Yes, you are.

5 THE COURT: Okay.

6 MS. JOSHI: Good morning, Your Honor. Cary Joshi
7 representing Robert Zeidman.

8 The sole argument made by Lindell Management LLC
9 in opposition to our motion to confirm and in support of
10 its motion to vacate is that under Section 10(a)(4) of the
11 Federal Arbitration Act the arbitration panel here exceeded
12 its powers.

13 Yet, under the incredibly narrow standard of
14 review, when an award is challenged under 10(a)(4), the
15 sole question for the Court, according to the Supreme Court
16 in *Oxford Health*, is whether the panel even arguably
17 interpreted the parties' contract, not whether they got
18 that interpretation right or wrong.

19 Under *Oxford Health*, the Court's inquiry should
20 be at an end if you find that the panel did interpret the
21 contract and that they had the power to interpret the
22 contract, and that is what the panel did.

23 But if you do go further and look at the panel's
24 actual decision, it only further supports confirmation in
25 this case.

1 So first, the narrow standard of review. That
2 standard has been described by the Eighth Circuit as among
3 the narrowest known to the law.

4 THE COURT: Probably in one of my cases that went
5 up there.

6 MS. JOSHI: In *Brotherhood of Maintenance of Way*
7 *Employees*. The Eighth Circuit further held in *Stark v.*
8 *Sandberg* that an arbitration award must be confirmed, "So
9 long as the arbitrator is even arguably pursuing or
10 applying the contract and acting within its authority."

11 To determine if the panel here, which was made up
12 of three members chosen by both sides, was acting within
13 its authority, the Court must look to the arbitration
14 agreement itself, which is contained in the "Prove Mike
15 Wrong Challenge" rules drafted by Lindell Management.

16 Under the incredibly broad arbitration provision
17 in the contest rules, the panel clearly had the authority
18 to interpret the contract. Those rules state, "Any claim,
19 dispute or controversy whether in contract, tort or
20 otherwise arising out of, relating to or connected in any
21 way with the challenge or the breach, enforcement,
22 interpretation or validity of these terms and conditions
23 shall be resolved exclusively by final and binding
24 arbitration."

25 There is simply no doubt that Lindell gave the

1 panel the authority to interpret the contract, and so
2 that's what they did. They analyzed the section of the
3 rules setting forth what contestants in the "Prove Mike
4 Wrong Challenge" had to prove.

5 The panel interpreted the rules giving, as they
6 said, "Due regard for the intent of the parties as
7 expressed in the language of the agreement."

8 They found that the rules themselves centered on
9 the analysis of the authenticity of the data to be provided
10 to contestants and not on disproving something else about
11 that data, such as that it showed election interference.

12 Lindell agrees with this approach.

13 THE COURT: So I have a question about this.

14 The material that was provided by Mr. Lindell's
15 expert, I guess Mr. Montgomery, where did that material
16 come from? I take it it wasn't packet capture data, but
17 where did it come from? It wasn't clear.

18 MS. JOSHI: Yeah. So it wasn't perfectly clear
19 either in the case, Your Honor. Dennis Montgomery is the
20 person to have said to have sold the data to Mr. Lindell.

21 He claimed that it came from the Internet and
22 showed votes going back and forth between voting machines
23 during the 2020 presidential election. The source of the
24 data was never authenticated.

25 THE COURT: I see. So it came from the Internet

1 but not authenticated as what they referred to as packet
2 capture data.

3 MS. JOSHI: Allegedly came from the Internet.
4 Was not authenticated as packet capture data. Exactly.

5 And the panel concluded that election data as
6 used in the contract was to be valid data from the 2020
7 election process, and they didn't look to the facts of the
8 case. They didn't say this data had to be PCAP data.

9 They looked at just the terms of the contract and
10 established what that meaning of 2020 election data was.
11 They exercised the power given to them. They didn't exceed
12 it.

13 What Lindell is really arguing is with the
14 panel's interpretation. Lindell wanted the panel to focus
15 on different words and wanted it to look at what "related
16 to" meant in the contract. They --

17 Lindell argued that "relating to" should be
18 interpreted as so broad as to encompass almost any data, no
19 matter the source or the format of that data. For example,
20 Lindell argued that the files provided to the contestants
21 that contained IP addresses that could be traced to
22 locations in China were related to the 2020 election
23 because there were claims by some that China interfered in
24 the 2020 presidential election.

25 THE COURT: Did the panel consider whether the

1 packet capture data, whether packet capture data itself
2 could be altered, or did they not even get into that? They
3 just made the determination that in order to be valid, the
4 election data for the contest, it had to be data that was
5 captured in this packet format.

6 That's as far as they went.

7 MS. JOSHI: I think their thought process was,
8 first how do we define 2020 election data? It's valid data
9 from the 2020 election process.

10 Then they looked to the facts and said the
11 contestants were told they were being provided data from
12 the Internet. This is not data from the Internet because
13 it did not come in the format it would if it had been from
14 the Internet, and therefore it's not valid.

15 So first, they interpreted the term, and then
16 they applied it to the facts. And so whether or not it
17 could have been altered, the fact that it was said to come
18 from the Internet and my client, Mr. Zeidman, showed that
19 it had not come from the Internet, that was the decision
20 made by the panel.

21 THE COURT: Was there anything in the contract
22 that required any kind of deference to the initial panel
23 that looked at this?

24 MS. JOSHI: There wasn't anything in the contract
25 that gave deference. At the hearing, and as the panel

1 stated in their decision, we all agreed that their role was
2 to, once they interpreted the contract, then sort of play
3 the role of the panel and decide whether or not Mr. Zeidman
4 had met the requirements of the contest, and so that's the
5 role they took on.

6 The panel found that Lindell's interpretation
7 ignored references contained within the rules, that the
8 data was from the election and had to be election data.
9 The panel found this to be an unreasonable result.

10 As the Supreme Court made clear in *Oxford Health*,
11 if the arbitrator has been given the power to interpret the
12 contract, as the panel was here, then disagreement with the
13 interpretation is not a basis to overturn the award.

14 We contend that applying this restrictive award
15 alone is more than a sufficient basis to confirm the award
16 but that looking at the actual decision only reinforces
17 confirmation, and that's what we were just talking about,
18 what was the panel's process in first interpreting and then
19 applying.

20 Their interpretation came from the words of the
21 contract itself. They then determined whether or not
22 Mr. Zeidman showed that those eleven files provided to the
23 contestants were not valid data from the 2020 election
24 process.

25 They listened to the witnesses. They looked at

1 the evidence, and based on that evidence, they found that
2 he did indeed fulfill the requirements of the contest.

3 Given the narrow review standard, as well as the
4 panel's well thought out and well reasoned decision in this
5 case, we respectfully ask that the Court confirm the award,
6 deny the motion to vacate and order Lindell Management to
7 pay the judgment within 15 days of the Court's order.

8 Thank you.

9 THE COURT: Thank you, Ms. Joshi.

10 Mr. Beck?

11 MR. BECK: Thank you, Your Honor. May it please
12 the Court and counsel.

13 Your Honor, I practiced for, I'm not going to say
14 how many years at this point, but a long time in the labor
15 law area, and my experience in this particular area of law
16 deals with labor arbitration cases.

17 But that being said, it's the same standard under
18 the Federal Arbitration Act, and look, I'll be very candid.
19 We understand it's difficult to overturn an arbitration
20 award. You just heard a lot of boilerplate law to that
21 effect, and that's fine.

22 The issue here, and just to answer your question,
23 Your Honor, the Supreme Court and the Court of Appeals have
24 made a distinction under Section (a)(4) between
25 interpreting a contract, which is fine, and changing the

1 contract or rewriting a contract, and that's a difficult
2 line to draw.

3 Sometimes it's going to be very fact dependent,
4 but I can tell you that this case presents a very stark
5 example of arbitrators saying they just didn't like the way
6 this was written, and so they were going to rewrite it in
7 what they determined a more reasonable way.

8 I'll get to that in minute, but that's exactly
9 what they said here. That's what the FAA says you cannot
10 do under 10(a)(4). If you exceed the powers, if you do
11 what you consider to be fair or reasonable, or in labor law
12 we say if they impose their own notions of justice when
13 reviewing a contract, that's not what is supposed to
14 happen.

15 So I'm going to work backwards, Your Honor, if I
16 may, and I am going to start with the rules here and first
17 answer your question.

18 And Ms. Joshi, with respect to her, the rules
19 very specifically say that all ambiguities within the rules
20 are resolved in favor of Lindell Management, and that's in
21 the documents that have been submitted to the Court.

22 So in terms of whether there is deference or not,
23 I would say that certainly, that is deference in that case.

24 All right. Page 5 of the decision, the
25 arbitration decision, lists the rules here, and the rules

1 are convoluted. They are a little bit awkwardly drafted.
2 I admit that, but they're also very clear in the words that
3 are used here.

4 And the best statement of the rule here is in
5 paragraph 1 on page number 5, which says that the
6 contestants, Mr. Zeidman in this case, were required to --
7 this is the quote, unequivocally -- "Will show
8 unequivocally the data does not reflect information related
9 to the November 2020 election."

10 And we're supposed to take a look at the very
11 common way of reading that. So it's two steps. Ms. Joshi
12 went right by the "reflect" comment and went to the
13 "related to" comment.

14 That's fine. That's half of it, but this is data
15 that is related to the election and the common use of that
16 term or any data that reflects information that is related
17 to.

18 There is no other way to read this. That means
19 anything about the election or even touching on the
20 election probably meets this standard, and recall that for
21 purposes of the contest, Mr. Zeidman was required to prove
22 "unequivocally," quote, and quote, "to 100 percent degree
23 of certainty" that this information did not reflect
24 information that is related to the election.

25 That's a very high standard. It's proving a

1 negative in some sense, so very difficult.

2 THE COURT: Do we know where the information that
3 Mr. Montgomery sold came from? It appears to be the
4 Internet, but that's a fairly broad commentary.

5 MR. BECK: Mr. Montgomery is not saying, and he
6 has intimated that it comes from a number of sources, all
7 of which are on the Internet in some sense. It clearly
8 came from the Internet. Everything comes from the Internet
9 these days, Your Honor.

10 My outline for today was e-mailed to me this
11 morning. Came off the Internet. You know what? It's not
12 in a packet capture format, but I digress.

13 The data involved here were monumentally big. It
14 was terabytes of data, and that was one of the
15 complications here. They took a slice, what they called a
16 slice of the data, and the data were not in packet capture
17 format.

18 So spoiler alert here: I'm going to tell you
19 they were not in fact in that format. Packet capture or
20 PCAP is a format for data. It's not data itself, and
21 adhering, the computer experts who know more than I do
22 certainly, referred to this as the envelope in which you
23 put the letter which contains the information.

24 So everything goes across the Internet, and yes,
25 everything is in a packet capture format at some point, but

1 the data that is in that file is then manipulated or used
2 or stored in some other fashion.

3 So getting back to the rules here, the rules are
4 very, very broad, and Mr. Zeidman recognized that, I think,
5 because he took the position at trial -- and this is on
6 page 13 of the decision -- that it can't mean that. It
7 can't mean what it would mean in ordinary terms because
8 that would be, as he put it, unreasonable.

9 And the panel seemed to buy into that argument
10 because they recognized, I think, as you'll see, that under
11 the literal language of the contest, Mr. Zeidman would
12 lose.

13 And so I'm just going to draw the Court's
14 attention to what I think is the dispositive language here,
15 pages 13 and 14 of the decision.

16 This is the quote: "It would be unreasonable to
17 conclude that any data about the election is election data.
18 If such data qualified, the contest would not really be a
19 contest at all."

20 So at that point they rewrote the contest to mean
21 something else.

22 THE COURT: Well, it seems that they were --
23 "struggling" is probably not a word. Maybe it was easy for
24 them. I don't know, but they were trying to figure out a
25 way to make sure that the information that Mr. Lindell

1 provided to Mr. Zeidman was accurate and legitimate.

2 And I guess they relied on the PCAP formatting to
3 determine what is legitimate data and what is not, I guess.
4 I don't know.

5 Maybe that's just a guess on my part.

6 MR. BECK: The answer to that question is
7 complicated, Your Honor, because as part of what I'm going
8 to call "analysis" -- and I'm using air quotes when I say
9 that -- they did say, okay, one, it has got to be valid
10 data, and then it has got to be related to election
11 processes.

12 They didn't define "valid data." They didn't
13 define "election processes." They just said this, and then
14 they said, and we're going to decide if it is not in PCAP
15 format it doesn't meet any of those things, and therefore
16 it's not related to the election or it doesn't reflect
17 information that is related to the election.

18 It's a long series of chains in their analysis.
19 That is in fact what they would have said they were doing.
20 However, in doing so, they incorporated something that was
21 completely outside of the contract.

22 And I'm just going to skip ahead to that point
23 since they brought it up, Your Honor. The PCAP thing runs
24 throughout this entire case.

25 To refer back to the panel's statement about not

1 being much of a contest, if the only issue was showing that
2 the one PCAPs in the data that were provided, that wouldn't
3 be much of a contest, either, because they weren't and
4 everybody said that at the beginning, including
5 Mr. Zeidman.

6 So to be blunt, and I hope this is respectful,
7 but if that's all he had to do, I could have done it, and I
8 am no computer expert, believe me. But if I knew there
9 were five million dollars I could claim, perhaps I would
10 have done that. I don't know.

11 Look. The PCAP issue was imported wholesale, and
12 by way of background, the panel said, and this is on page
13 12, "The rules are unambiguous, and no parol evidence is
14 required for contract interpretation."

15 Okay. That's basic law. Then they went on on
16 page 14 to say, we're going to decide this based on the,
17 quote, "Intent of the parties as expressed in the language
18 of the agreement."

19 Great. That is exactly what they were supposed
20 to do, obviously, but they didn't do that. They started
21 off with this idea as a major premise that got to be PCAPs
22 because they just went through that analysis I talked
23 about.

24 Where did that come from? It came from extrinsic
25 evidence. There was nothing in the rules about PCAPs, and

1 there are a number of ways that this can be shown from the
2 record in front of us.

3 But if you look at pages -- page 13 of the
4 decision, they just come out and say Mr. Lindell admitted
5 that PCAPs had to be there for there to be election data.
6 They say it twice, actually.

7 Once they got to that conclusion, it was very
8 easy for them to say Zeidman won because all his report
9 says, there are no PCAPs. I've definitely shown that.
10 Okay. Fine.

11 But there was never any testimony or any document
12 or any evidence that PCAPs were part of this, and in fact
13 Mr. Zeidman -- this is quoted in our brief -- was very
14 upset when he got to the symposium because he said, look, I
15 thought there was going to be PCAPs here we were going to
16 look at.

17 He said he thought that when he was reading the
18 rules he was presented on the first day of the symposium.
19 He signed the rules anyway, despite knowing that PCAPs were
20 not in there.

21 Both parties have cited to the decision talking
22 about how all of the experts were saying, wait a minute,
23 there are no PCAPs here. And there was testimony from one
24 of our experts, Doug Frank, saying, no, we didn't give
25 PCAPs. That's fine.

1 So that was out in front. So if you're using
2 that as the reason to say Zeidman should win, then we have
3 blown the whole contest completely open. We have changed
4 the contest at that point.

5 Here's the thing. The evidence, if you want to
6 call it that, about PCAPs and what Mike Lindell said about
7 that comes from television clips that were played by
8 Ms. Joshi during her opening statement for the arbitrators'
9 benefit, and they were very good. They were very
10 effective.

11 Mr. Lindell likes to go on television, and he
12 said some things. He never testified about that at
13 hearing. He never said this is the symposium, this is the
14 "Prove Mike Wrong Challenge."

15 Those are things he said somewhere else. This is
16 hearsay. This is extrinsic evidence which the panel said
17 we don't need that, but they did it anyway.

18 The use of audiovisual at trial is very
19 effective, but sometimes it kind of blows people away and
20 impresses them a little too much. It did in this case.
21 That's the only evidence that PCAPs would have been part of
22 this.

23 So bringing that in is parol evidence. It's
24 extrinsic. It's hearsay, and it totally changed the nature
25 of this contest. It made it into a gimme for Mr. Zeidman,

1 and that was not what was planned obviously because if you
2 look at the rules, that's not what it says.

3 And we have cited a couple cases, so has counsel.
4 I mean, there are 100 cases on this point. They're all
5 over the place, as you know.

6 The Eighth Circuit in this *Northwest Airlines*
7 case that we cited on page 13 of our brief is instructive,
8 I think, because the union in that case had a last chance
9 agreement bringing somebody back to work who had been
10 terminated, and the employee was supposed to jump through a
11 number of hoops regarding a driver's license.

12 He didn't do that. He didn't do it technically
13 correctly, so he was terminated again. The arbitrator put
14 him back to work saying, this is a quote: "The intent and
15 purpose of the settlement in any material sense was not
16 violated."

17 Well, Judge Rosenbaum and then the Eighth Circuit
18 said that's not good enough because they had a deal, and he
19 didn't live up to the deal, so therefore we're going to
20 look at the language because, again, the language is clear.
21 Common usage of that language, and no parol evidence comes
22 in.

23 The second case is a little more fun, I guess,
24 *Republican National Committee*. You may remember Haley
25 Barbour, who is the chair of the RNC. He liked to make

1 dramatic statements, so he had a prove-me-wrong challenge.

2 And the "prove me wrong" was that the
3 republicans' plan at that time -- this is 20 years ago --
4 would not cut Medicare spending.

5 Well, somebody came up with a pretty good theory
6 saying, yeah, it does, it actually does in some ways. The
7 DC circuit rejected that and said look --

8 THE COURT: That wasn't an arbitration, though,
9 was it? It was a simple interpretation of the contest?

10 MR. BECK: It was. It was, Your Honor. It was.

11 But the exact same types of ideas apply here, and
12 because it's a prove-me-wrong challenge, well, I grabbed it
13 for purposes of this.

14 When you have a contract like this and it says
15 what it says, you can parse the language forever and come
16 up with a different interpretation, but that's not good
17 enough.

18 Before I leave this topic, the PCAPs, the
19 television clips that were shown at hearing with great
20 fanfare, it's important not because the arbitrators got it
21 wrong, they clearly did, but that's not the entire point.
22 It shows how they changed the rules.

23 And I just want to emphasize, everybody
24 acknowledges this. Mr. Zeidman testified about this. I
25 said he showed up, and he admitted that he thought -- he

1 read the rules and he said this is not what I thought it
2 was going to be. I thought that we were going to talk
3 about PCAPs.

4 He also testified -- this is in footnote 2 of our
5 opening brief. He said, yeah, there is information in
6 there that's related to the election. I'm just not sure it
7 proves anything.

8 So he said, yeah, it's related to. Well, what
9 else does "related to" mean? We can go through that long,
10 long four-step process the arbitration panel did, or we can
11 use common meaning and not import extrinsic evidence, like
12 the panel said it was going to.

13 So the rules were unambiguous here. We
14 stipulated to that. Counsel both said, yeah, they're
15 unambiguous, and the panel repeated it.

16 The meaning of the rules said what it said. It
17 said, gees, almost anything is going to be good enough
18 here.

19 And their testimony was, and this is Mr. Zeidman
20 again. Look, there were polling places in there. There
21 were candidates' names in there. There was other
22 information about polling and votes and that sort of thing.
23 I just don't think it proves that things were changed in
24 the election.

25 That's not good enough. That wasn't what the

1 contest was. If it was, it would have said that.

2 So, Your Honor, under 10(a)(4), clearly this
3 panel got beyond its skis, and it decided to make this a
4 fair or reasonable, as it put it, contest and in doing so
5 went beyond its authority, and we would ask that the
6 decision be vacated.

7 THE COURT: All right. Thank you, Mr. Beck.

8 MR. BECK: Thank you.

9 THE COURT: Did you have any brief reply,
10 Ms. Joshi?

11 MS. JOSHI: Yes, briefly.

12 THE COURT: Go ahead.

13 I will give you an opportunity to reply as well.

14 MR. BECK: Thank you.

15 MS. JOSHI: Your Honor, contrary to Mr. Beck's
16 assertion, the panel did not go outside to define the terms
17 of the contract. They first defined the term "2020
18 election data." They then went to the contest and looked
19 at what the contest was about.

20 Mr. Lindell absolutely testified that what was
21 supposed to be given was data from the Internet in the form
22 of packets, and he described it several times within his
23 deposition and at the trial.

24 Whether or not there were television clips used
25 in my opening argument, we can agree that that is not

1 relevant here, and what is more important is that the panel
2 said it was not relevant. They did not look at extrinsic
3 information to define the terms of the contract.

4 They then absolutely appropriately looked at the
5 evidence from the contest to decide whether or not
6 Mr. Zeidman had indeed shown that that data was not from
7 the 2020 election.

8 They didn't say that the election data had to be
9 PCAP data. What they said is, the "Prove Mike Wrong
10 Challenge" was supposed to be about Internet data.
11 Mr. Zeidman showed this is not Internet data. Therefore,
12 he has shown what he was supposed to show under the rules.

13 What is clear here is that the rules were written
14 poorly, but the panel did their job in not going outside
15 the words of the contract. They interpreted the contract,
16 and under 10(a)(4), that interpretation should stand.

17 Thank you.

18 THE COURT: Thank you, Ms. Joshi.

19 Anything else, Mr. Beck?

20 MR. BECK: I was advised when I got sworn in to
21 never rebut, but I sometimes find it difficult.

22 Your Honor, with regard to what Mr. Lindell said
23 at hearing, the panel on page 13 of its decision did say
24 that he said this, but they don't have any citations to the
25 record.

1 And I feel like I have been blowing this into the
2 ether for now the past year. I went back and looked, and I
3 looked at the briefs of Mr. Zeidman, and they don't cite to
4 the record for that, either.

5 So I went back to the arbitration briefs that
6 were filed way back when with the arbitration panel, and I
7 found where they make that claim. Mr. Lindell stated he
8 would show PCAP data to the cyber experts. This is on page
9 13 of their post hearing brief.

10 And I went to the transcript page that's cited,
11 and what do you know. It's just saying this is what
12 Mr. Zeidman understood. There is no reference to any
13 testimony by Mike Lindell. It also references
14 Mr. Zeidman's report.

15 I went there. There is nothing there, either.
16 That just simply does not exist, and I'll tell you what.
17 We quoted the language in our briefs. The panel
18 specifically said it has to be PCAPs. At the end of that
19 long analysis, they said it has to be PCAPs.

20 So with all respect, counsel is wrong about that.
21 That is exactly how they made their decision. I will leave
22 it at that.

23 Thank you.

24 THE COURT: Thank you, Counsel, for your
25 arguments today. Excellent. I appreciated hearing from

1 both of you.

2 The Court will take the motions under advisement
3 and will issue a written order as quickly as possible.

4 Thank you.

5 MR. BECK: Thank you.

6 THE COURT: Thank you.

7 THE CLERK: All rise.

8 THE COURT: Thank you for coming, Mr. Zeidman.

9 **(Court was adjourned.)**

10 * * *

11 I, Kristine Mousseau, certify that the foregoing
12 is a correct transcript from the record of proceedings in
13 the above-entitled matter.

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16
17 Certified by: s/ Kristine Mousseau, CRR-RPR
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